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**TITLE 329 SOLID WASTE MANAGEMENT DIVISION**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #16-204

**UNDERGROUND STORAGE TANKS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [329 IAC 9](#) concerning underground storage tanks. IDEM seeks comment on the affected citations listed and any other provisions of Title 329 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [329 IAC 9](#).

**AUTHORITY:** [IC 13-14-8-1](#); [IC 13-14-8-2](#); [IC 13-14-8-7](#); [IC 13-23-1-2](#); [IC 13-23-1-3](#); [IC 13-23-1-4](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

The Indiana Department of Environment Management (IDEM) implements a United States Environmental Protection Agency (U.S. EPA) approved underground storage tank (UST) program. An UST is a tank or a combination of tanks used to contain an accumulation of regulated substances, the volume of which, including the volume of any underground pipes connected to the tank or combination of tanks, is at least 10% beneath the surface of the ground. The federal government regulates UST owners and operators through Subtitle I of the Solid Waste Disposal Act (SWDA), but allows for states to maintain their own programs. In order for an UST program to receive state program approval it must comply with 42 U.S.C. Subchapter 9 and corresponding federal regulations including 40 CFR 280, which set standards for UST ownership and operation, and 40 CFR 281, which regulates state program approval. Approval was granted to Indiana's program on July 12, 2006. There are many benefits to state program approval. If a state has program approval, UST owners and operators will be subject to only one set of standards, rather than having to expend costs ensuring compliance with both federal regulations and state rules. Additionally, state program approval maximizes funding from U.S. EPA to assist with administration of the UST program.

Indiana UST rules are found at [329 IAC 9](#), and require UST owners and operators to install and maintain equipment to prevent corrosion, detect leaks, prevent overfill, prevent spills, and meet other performance and upgrade standards. Owners and operators must also maintain financial responsibility for corrective action and liability to third parties. Standards also address release detection, prevention, corrective action, and IDEM's ability to prohibit delivery as authorized by [IC 13-23](#).

U.S. EPA made changes to 40 CFR 280 and 40 CFR 281, publishing in the Federal Register on July 15, 2015 (80 FR 41565). U.S. EPA has provided many resources to aid states in understanding the changes and how to continue state program approval. The following changes have been highlighted by U.S. EPA:

- Adding secondary containment requirements for new and replaced tanks and piping.
- Adding operator training requirements.
- Adding periodic operation and maintenance requirements for UST systems.
- Adding requirements to ensure UST system compatibility before storing certain biofuel blends.
- Removing past deferrals for emergency generator tanks, airport hydrant systems, and field-constructed tanks.
- Updating codes of practice.
- Making editorial and technical corrections.

Further information can be found at

<http://www2.epa.gov/ust/revising-underground-storage-tank-regulations-revisions-existing-requirements-and-new>.

In order to maintain state program approval, [329 IAC 9](#) must be amended to be at least as stringent as 40 CFR 280. Further, IDEM must submit the rule changes to U.S. EPA to be evaluated within three years of the effective date of the changes U.S. EPA published on July 15, 2015.

IDEM proposes to amend [329 IAC 9](#) to be at least as stringent as 40 CFR 280 while ensuring compliance with applicable Indiana law and rules. This may include clarifications to the existing requirements of [329 IAC 9](#). Clarifications may include:

- Adding necessary definitions
- Reviewing when and how information is submitted to the department by owners and operators.
- Considering compliance schedules for implementation of new requirements.

Further, IDEM will also review the rule to ensure typographical errors, inconsistencies, and organizational issues are clarified. The rule will also be reviewed to ensure compliance with rule drafting guidelines, and for opportunities to streamline, simplify, and clarify the language. IDEM seeks comment on the affected citations

listed, including suggestions for specific language, any other provisions of Title 329 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

#### **Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Amend the rule to comport with 40 CFR 280 while ensuring compliance with applicable Indiana law and rules. Review the rule to ensure typographical errors, inconsistencies, and organizational issues are clarified. Streamline, simplify, and clarify the language and ensure the rule is in compliance with rule drafting guidelines.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? Yes. The rule must be at least as stringent as 40 CFR 280; all applicable requirements will be incorporated by reference or included in the rule full text.
- Is this alternative imposed by federal law or is there a comparable federal law? No. However, if a state plans to maintain state program approval under Subtitle I of SWDA for UST programs, it must comply with 42 U.S.C. Subchapter 9 and corresponding federal regulations 40 CFR 280 and 40 CFR 281 by being at least as stringent.
- If it is a federal requirement, is it different from federal law? No. 40 CFR 280 contains all necessary regulations for an UST program.
- If it is different, describe the differences. Not applicable.

Alternative 2. Not do a rulemaking.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No. 42 U.S.C. Subchapter 9 and 40 CFR 280 regulate an UST and owners and operators and 40 CFR 281 encourages states to have state program approval. State program approval ensures that a state agency receives the maximum allowable amount of funding from U.S. EPA through Subtitle I of the SWDA.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Applicable Federal Law**

42 U.S.C. 6912, Authorities of Administrator

42 U.S.C. Subchapter 9, Regulation of Underground Storage Tanks

40 CFR 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST)

40 CFR 281, Approval of State Underground Storage Tank Programs

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. This alternative will not impose any requirements on regulated entities beyond what is imposed under federal law and regulation. If IDEM does not continue to receive federal funding due to failure to adopt the updates, the state would be responsible for paying the costs associated with the program. Importantly, UST owners and operators would be subject to two sets of regulations, the federal laws and regulations as well as Indiana's laws and rules would apply. This would result in a significant cost to the state and the public. This unnecessary burden would make it difficult to ensure protection to human health and the environment.

Reviewing the rule for opportunities to fix typographical errors, inconsistencies, and organizational issues, to streamline and simplify the language, including incorporating reference material, and ensure the rule is in compliance with the Administrative Rules Drafting Manual may result in a nominal cost savings to the regulated community. Clear and updated rules should enhance the ability of the regulated community to comply with requirements.

Potential Fiscal Impact of Alternative 2. If IDEM does not ensure it continues to receive funding under Subtitle I of SWDA for UST programs by amending the rule to be at least as stringent as 40 CFR 280, the state would be responsible for paying the costs associated with the program. This would result in a significant cost to the state and the public. Further, regulated entities would have to comply with potentially conflicting federal and state laws and regulations, potentially resulting in higher compliance costs.

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Patricia Daniel

IDEM Small Business Regulatory Coordinator

IGCN 1225

100 North Senate Avenue

Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 4-4-35-8](#) is:

Robert Warner  
Office of Small Business and Entrepreneurship  
One North Capitol, Suite 600  
Indianapolis, IN 46204  
(317) 232-5679  
ombudsman@osbe.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 4-4-35-8](#), specifically [IC 4-4-35-8\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Steven N. Howell  
IDEM Small Business Assistance Program Ombudsman  
IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8587 or (800) 451-6027  
snhowell@idem.in.gov

#### **Public Participation and Work Group Information**

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Lauren Aguilar, Rules Development Branch, Office of Legal Counsel at (317) 234-8559 or (800) 451-6027 (in Indiana).

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #16-204 UST update  
Lauren Aguilar  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to [laguilar@idem.in.gov](mailto:laguilar@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### **COMMENT PERIOD DEADLINE**

All comments must be postmarked, faxed, or time stamped not later than June 17, 2016. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Lauren Aguilar, Rules Development Branch, Office of Legal Counsel (317) 234-8559 or (800) 451-6027 (in Indiana).

Nancy King, Chief  
Rules Development Branch

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An [html](#) version of this document.